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NASA Policy Directive

NPD 1400.2EEffective Date: November 29,
2011Expiration Date: November 29,
2016**COMPLIANCE IS MANDATORY**[Printable Format \(PDF\)](#)

Request Notification of Change

 (NASA Only)

Subject: Publishing NASA Documents in the Federal Register and Responding to Regulatory Actions

Responsible Office: Office of Internal Controls and Management Systems

a. It is NASA's policy to publish its notices and regulations in the Federal Register (FR) to give the general public information on the Agency's activities and, where applicable, an opportunity to comment. Notices and regulations are prepared in accordance with the FR Document Drafting Handbook and certified as prescribed by the Administrative Committee of the Federal Register.

(1) NASA notices include, but are not limited to, notices of meetings for the NASA Advisory Council (NAC) or NAC subcommittees, prospective patent licenses, Government-owned inventions available for licensing, final environmental impact statements, and information collections. NASA notices are issued by the office of primary responsibility to achieve compliance with external requirements.

(2) NASA regulations, which are codified in Titles 2, 5, 14, and 48 of the Code of Federal Regulation (CFR) include proposed rules (i.e., notices of proposed rulemaking), preliminary rules (i.e., advance notices of proposed rulemaking), final rules, interim final rules, and direct final rules. See Attachment A for definitions. A regulation is amended or issued if an Official-in-Charge (OIC) and the General Counsel determine that it is required or is the best available method for achieving compliance with the Agency's objectives.

b. It is NASA's policy to submit its planned regulatory priorities to the Office of Management and Budget's (OMB) semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions and summarize its significant regulations under development in OMB's annual Regulatory Plan. As prescribed by Executive Order (EO) 12866, Regulatory Planning and Review and EO 13563, Improving Regulation and Regulatory Review, NASA regulations will be proposed only upon a reasoned determination that its benefits justify its cost, and are tailored to impose the least burden on society.

2. APPLICABILITY

a. This NPD is applicable to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers.

b. In this NPD, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms: "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended, but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.

3. AUTHORITY

- a. The National Aeronautics and Space Act, as amended, 51 U.S.C. § 20113(a).
- b. The Privacy Act of 1974, 5 U.S.C. 552a.
- c. Administrative Committee of the Federal Register, 1 C.F.R. pts. 1-12, 15-22, and 51.
- d. Regulatory Planning and Review, Exec. Order 12866, 3 C.F.R. 638 (1993), as amended.
- e. Improving Regulation and Regulatory Review, Exec. Order 13563.

4. APPLICABLE DOCUMENTS

- a. Inspector General Act of 1978, as amended, 5 U.S.C. App.
- b. Federal Advisory Committee Act, 5 U.S.C. App., as amended.
- c. Government in the Sunshine Act, 5 U.S.C. 552b.
- d. Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq.
- e. Congressional Review of Agency Rulemaking, 5 U.S.C. 801-808.
- f. National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended.
- g. Paperwork Reduction Act of 1980, 44 U.S.C. 3501.
- h. E-Government Act of 2002, PL 107-347, 116 Stat. 2899 (2002), as amended.
- i. Civil Justice Reform, Exec. Order 12988, 3 C.F.R. 157 (1996).
- j. Consultation and Coordination With Indian Tribal Governments, Exec. Order 13175 (2000).
- k. Federalism, Exec. Order 13132, 3 C.F.R. 206 (1999).
- l. NASA Grants and Cooperative Agreements Handbook, 14 C.F.R. pt. 1260, et seq.
- m. Regulations Implementing the Government in the Sunshine Act, 29 C.F.R. pt. 2203.
- n. Federal Advisory Committee Management, 41 C.F.R. pts. 102-103.
- o. Federal Acquisitions Regulation, 48 C.F.R.
- p. NPR 1441.1, NASA Records Retention Schedules.
- q. Federal Register Document Drafting Handbook, 1998 edition.
- r. Standard Operating Procedures for Publishing NASA Documents in the Federal Register (Attachment B).
- s. NHQ Form 117, Action Document Summary.
- t. Form 24722, Submission of Federal Rules Under the Congressional Review Act.
- u. Regulatory Information Data Form.

5. RESPONSIBILITY

- a. The NASA Administrator shall sign all regulations prior to publication in the FR, except as provided in paragraph 5e.
- b. The NASA Associate Deputy Administrator for Policy Integration, as NASA's Regulatory Policy Officer, in accordance with EO 12866, shall approve NASA's statement of regulatory priorities included in OMB's annual Regulatory Plan.
- c. The Assistant Administrator for the Office of Internal Controls and Management Systems (OICMS) shall:

(1) Implement all external requirements for preparation and submission of Agency notices and regulations.

(2) Approve NASA's submission to OMB's semiannual Unified Agenda.

(3) Designate an FR liaison officer, certifying officer, and authorizing officer with an alternate for each.

d. The FR liaison officer, certifying officer, and authorizing officer shall:

(1) Ensure that all NASA notices and regulations are properly prepared in accordance with the FR Document Drafting Handbook.

(2) Ensure that regulations are coordinated, approved, and published within established timelines, and withdrawn from the Unified Agenda if not submitted for signature to the Administrator in order to meet established timelines.

(3) Ensure that responsible offices are notified when regulations under their authority approach the five-year required review, six months in advance, and request that regulations be reviewed to determine if any should be amended, repealed, or retained as is.

(4) Ensure that NASA regulations are posted in the Federal Docket Management System (FDMS) for public comment, as prescribed by the E-Government Act of 2002, EO 12866, and EO 13563.

(5) Ensure that regulations are provided to Congress and the General Accountability Office (GAO) for a Congressional review before they take effect, in accordance with the Congressional Review of Agency Rulemaking, except as provided in paragraph 5e.

(6) Obtain OMB's approval on all NASA regulations before submitting the regulations to the FR for publication, in accordance with EO 12866, except as provided in paragraph 5e.

(7) E-mail all digitally signed notices to the FR for publication, except as provided in paragraph 5e.

(8) Certify and transmit all NASA regulations to the FR for publication, except as provided in paragraph 5e.

(9) Coordinate and submit NASA's regulatory priorities and regulations under development to OMB for inclusion in the Regulatory Plan and the Unified Agenda using the Regulatory Information Service Center and Office of Information and Regulatory Affairs Consolidated Information System.

(10) Maintain all records pertaining to NASA notices and regulations and the Agency's submission to the Regulatory Plan and the Unified Agenda, in accordance with NPR 1441.1, NASA Records Retention Schedules.

e. The Assistant Administrator for Procurement, or designee, shall:

(1) Prepare and sign all notices and regulations dealing with the NASA Grant and Cooperative Agreements Handbook and the Federal Acquisitions Regulation (FAR), in accordance with the FR Document Drafting Handbook.

(2) Certify and transmit all procurement-related notices and regulations to the FR for publication.

(3) Post all procurement-related regulations in the FDMS to receive and respond to public comments, in accordance with the E-Government Act of 2002.

(4) Submit regulatory priorities and regulations under development to the FR Liaison Officer for inclusion in the Regulatory Plan and the Unified Agenda.

f. The NASA General Counsel, or designee, shall:

(1) Prepare and sign all notices announcing the availability of patents for licensing and

notices of intent to grant a specific patent license.

(2) Advise OICMS on the legal requirements for publishing in the FR.

(3) Review and concur on all NASA regulations and NASA's annual statement of regulatory priorities and semiannual Unified Agenda, as prescribed by EO 12988, Civil Justice Reform.

g. The Assistant Administrator for Strategic Infrastructure, or designee, shall:

(1) Prepare and coordinate notices that have the potential to adversely affect the environment, or cause public controversy due to environmental impacts, to ensure compliance with the National Environmental Policy Act of 1969, as amended.

(2) Designate a Federalism Officer.

(3) Designate an Indian Tribal Governments Liaison Officer.

h. The Federalism Officer shall review the Agency's consolidation of regulations under development, prior to submission to OMB's Unified Agenda, in order to:

(1) Determine the impact of each NASA regulation on State and local government, pursuant to EO 13232, Federalism.

(2) Ensure appropriate consultation with State and local officials when NASA regulations preempt State law.

(3) Submit a Federalism summary impact statement to OMB prior to the promulgation of a NASA regulation that preempts State law.

(4) Prior to the promulgation of a NASA regulation that preempts State law, make available to OMB any written communications submitted to NASA by State and local officials.

i. The Indian Tribal Governments Liaison Officer shall review the Agency's consolidation of regulations under development, prior to submission to OMB's Unified Agenda, in order to:

(1) Determine the impact on Indian Tribal Governments for each NASA regulation, pursuant to EO 13175, Consultation and Coordination with Indian Tribal Governments.

(2) Ensure appropriate consultation with Indian Tribal Government officials when NASA regulations preempt tribal law.

(3) Submit an Indian Tribal Government impact statement to OMB prior to the promulgation of a NASA regulation preempting Indian tribal law.

j. The Associate Administrator for International and Interagency Relations, or designee, shall:

(1) Review all international and export control-related notices and regulations to ensure compliance with appropriate international agreements, U.S. foreign policies, and export control regulations.

(2) Designate a NASA Federal Advisory Committee Management Officer (ACMO).

k. The ACMO shall sign all notices announcing NASA Federal advisory committee meetings, including meetings of the NASA Advisory Council and its committees, the Aerospace Safety Advisory Panel, and other NASA Federal advisory committee meetings. Such meeting notices shall be published in the FR at least 15 calendar days prior to the date of the meeting, as prescribed by the Federal Advisory Committee Management.

l. The Chief Information Officer, or designee, shall:

(1) Prepare and sign all notices dealing with information collections under OMB review as part of NASA's continuing effort to reduce paperwork and respondent burden, in accordance with the Paperwork Reduction Act and the Regulatory Flexibility Act, as well as notices dealing with NASA systems of records subject Privacy Act of 1974.

(2) Coordinate NASA's current memorandum of agreement with the Environmental Protection Agency (EPA) to support the maintenance and operations of the FDMS, as well as transfer funding to EPA that reasonably reflect NASA's allocable share of calendar year costs for implementation, use, operations, and management of the FDMS.

m. The Assistant Administrator for Small Business Programs shall review and concur on all NASA regulations prior to publication in the FR, and NASA's annual statement of regulatory priorities and semiannual unified agenda, to determine whether the regulations are likely to have a significant economic impact on a substantial number of small entities, in accordance with the Regulatory Flexibility Act.

n. The Executive Director for Headquarters Operations, or designee, shall maintain tracking of all notices and regulations published under the Agency's assigned billing code.

o. The Assistant Administrator for Human Capital Management shall coordinate the consultation of NASA regulations, except as provided in paragraph 5e, with labor organizations granted National consultation rights at NASA, in addition to conducting its own review and submitting a concurrence on these documents.

p. OICs of Headquarters Offices, or their designees, shall:

(1) Ensure that all notices and regulations under their authority comply with the provisions of this NPD.

(2) Prepare notices of upcoming meetings for Federal advisory committee meetings under their authority and coordinate such notices with the NASA Federal ACMO for approval with sufficient lead time to ensure that notices are published in the FR not less than 15 calendar days prior to the meeting.

(3) E-mail draft notices to OICMS for review and approval and OICMS- approved, digitally signed notices for publication.

(4) Obtain concurrence from the Office of the General Counsel and written approval from the NASA Federal ACMO for any NASA Federal advisory committee meetings that:

(a) Are of an administrative, preparatory, or fact-finding nature not subject to the Federal Advisory Committee Act (FACA); or

(b) Require Agency written approval to formally close the meeting to the public, in accordance with FACA, the Government in the Sunshine Act, and other implementing regulations.

(5) Consult the Office of the General Counsel to determine the need to amend or issue regulations.

(6) Ensure that regulations under their authority do not replicate existing internal or external requirements. However, cross referencing may be used to cite existing requirements.

(7) Review the currency and appropriateness of their regulations at least once every five years and each time the underlying statutory authority is amended, in order to determine if action is needed to amend or repeal regulations.

(8) Respond to public comments on regulations under their authority by submitting those responses to the FR Liaison Officer for posting in the FDMS.

(9) Ensure that material is properly prepared, coordinated, and editorially correct, with emphasis on brevity and clarity.

(10) Coordinate all notices and regulations with the FR Liaison Officer.

(11) Submit regulatory priorities and regulations under development to the FR Liaison Officer for inclusion in the Regulatory Plan and the Unified Agenda.

q. NASA Center Directors, or their designee proposing notices, shall:

- (1) Ensure that all notices under their authority comply with the provisions of this NPD.
- (2) Coordinate all notices under their authority with their respective Office of the Chief Counsel for concurrence, the Headquarters (HQ) Office of the General Counsel for concurrence, the HQ Office of the Associate Administrator for approval, and the FR Liaison Officer for review prior to e-mailing digitally signed notices for publications.
- r. The Inspector General, in accordance with the Inspector General Act, shall review all regulations prior to publication in the FR. Notices signed by the Inspector General will be reviewed by legal counsel to the Inspector General and processed through the NASA FR Liaison Officer for publication.

6. DELEGATION OF AUTHORITY

None.

7. MEASUREMENTS

The OICMS shall verify compliance with this directive by reviewing each NASA notice, regulation, and unified agenda input to confirm that requirements are met and corrective actions are completed through the use of checklists.

8. CANCELLATION

NPD 1400.2D, Publishing NASA Documents in the Federal Register and Responding to Regulatory Actions, dated July 21, 2008.

/s/ Charles F. Bolden, Jr.
Administrator

ATTACHMENT A: Definitions

Direct Final Rule - A direct final rule is issued to expedite rulemaking for a noncontroversial action not expected to generate adverse comments. It is generally not preceded by a proposed rule, but can be issued concurrently. The comment period for a direct final rule usually runs 30 or 45 days from the date of publication.

Final Rule - A final rule finalizes a previously issued proposed rule or takes final action with a prior proposed rule (for good cause). It is generally issued to amend the CFR and is effective in 30 days from the date of publication in most cases, 60 days from the date of publication for major rules, or on the date of publication in response to an emergency or for other good causes shown.

Information collection - Can occur in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements.

Interim Final Rule - An interim final rule is issued to react to an emergency situation, relieves unnecessary restrictions on the public, and take public comments on interim action. An interim final rule takes effect generally on the date of publication or less than 30 days from the date of publication. The comment period for interim final rules usually runs 30, 60, or 90 days from the date of publication.

Preliminary Rule - A preliminary rule (also known as "Advanced Notice of Proposed Rulemaking") also announces possible changes to the CFR and solicits public comments on proposed regulatory text.

Proposed Rule - A proposed rule (also known as "Notice of Proposed Rulemaking") announces possible changes to the CFR and solicits public comments on proposed regulatory text. Comments on these rules must be considered and decisions to finalize justified. If proposed rules are impracticable, unnecessary, or contrary to the public interest, agencies may invoke a "good cause" exception.

Attachment B: Publishing NASA Documents in the Federal Register Standard Operating Procedures

B.1 Preparation of notices signed by the designated official

a. Prepare a notice using the guidelines outlined in the FR Document Drafting Handbook. Once the notice is finalized, e-mail the final draft notice to the FR Liaison Officer for review and processing.

b. After receiving the processed notice back from the FR Liaison Officer, obtain the authorized signer's digital signature on the notice and forward the digitally signed notice to the FR Liaison Officer for transmission to the FR.

Note 1: The person whose name appears in the signature block of the notice is the only one that can digitally sign the notice.

Note 2: When forwarding a digitally signed notice on behalf of the authorized signer, do not open the document, as it will compromise the digital signature.

B.2 Preparation of regulations signed by the NASA Administrator

a. Prepare a regulation using the guidelines outlined in the FR Document Drafting Handbook. Once the regulation is finalized, perform the following to coordinate for the NASA Administrator's signature:

Note: Download the Handbook at: <http://www.archives.gov/federal-register/write/handbook/ddh.pdf>

(1) Request a Regulatory Identification Number using the Regulatory Information Data (RID) form, and submit it to the FR Liaison Officer.

Note: Download the RID form and instructions for completing the form at: <http://www.reginfo.gov/public/jsp/regform/download.jsp>

(2) In the Preamble of the regulation, include language that instructs the public to submit comments to <http://www.regulations.gov/>.

(3) Prepare an Action Document Summary, NHQ 117, listing the organizations that will review and concur.

Note: At a minimum, obtain concurrences from the Office of the Chief Financial Officer, the Office of the General Counsel, the Office of Human Capital Management, the Office of Small Business Programs, the Office of the Inspector General, the Office of International and Interagency Relations, and the Office of Internal Controls and Management Systems.

(4) Make the appropriate number of copies and distribute the packages to the organizations for simultaneous concurrence.

b. After receiving all concurrences, e-mail the final draft regulation to the FR Liaison Officer for coordination of OMB's approval.

Note: OGC reviews during the simultaneous review, but concurs on the signature package.

c. After receiving notification from OICMS that OMB has approved, assemble the regulation in an Administrator's (A) signature package. See correspondence package assembly requirements outlined in NPR 1450.10.

d. Forward the package to OICMS.

Note 1: OICMS will forward the package to OGC for concurrence and the Executive Secretariat for review.

Note 2: OGC and the Executive Secretariat will coordinate corrections directly with the responsible office.

e. Once the signed regulation is returned, complete three Submission of Federal Rules Under the Congressional Review Act using Form 24722 and do the following:

(1) Attach a copy of the regulation to the form, make three copies, and obtain the respective OIC's original signature on all three copies.

Note 1: Download Form 24722 at: http://www.gao.gov/decisions/majrule/FED_RULE.PDF

Note 2: Be sure that each form has an original signature.

(2) Submit the original signed packages to the FR Liaison Officer.

Note: The FR Liaison Officer will forward the packages to GAO, the House of Representatives, and the Senate for Congressional review.

(3) Forward the original signed regulation, three copies of the original, and one copy of the ADS with concurrences from reviewing organizations, and e-mail the final version of the regulation in Microsoft Word format to the FR Liaison Officer.

Note: The FR Liaison Officer will forward the regulation to the FR for publication. Regulations are published three days after receipt by the FR.

(URL for Graphic)

None.

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